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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

KING MOUNTAIN TOBACCO
COMPANY, INC.,

Debtor.

No. 20-01808

DECLARATION OF PAUL M. LEVINE
IN SUPPORT OF DEBTOR'S MOTION
FOR RELIEF FROM STAY TO
PROCEED WITH LITIGATION IN
YAKIMA COUNTY SUPERIOR COURT

PAUL M. LEVINE declares:

1. I am an attorney at Baker & Hostetler LLP ("BakerHostetler"), special counsel to the above-captioned debtor-in-possession ("Debtor" or "King Mountain"). I have personal knowledge of the facts set forth herein. I make this declaration in support of the Debtor's Motion for Relief From Stay to Proceed with Litigation in Yakima County Superior Court (the "Motion"). Capitalized terms not defined herein shall have their meanings as ascribed in the Motion.

2. BakerHostetler has represented King Mountain in connection with the pending litigation against Kamiakin Wheeler, Kanim James, and Lone Warrior Holdings, Inc. ("Defendants"), filed in Yakima County Superior Court, Case No. 19-2-

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1 04309-39, *King Mountain Tobacco Company, Inc. v. Wheeler, et al.* (the “Lawsuit”).

2 3. The Debtor has alleged Defendants committed numerous improprieties in
3 connection with their employment at King Mountain, including theft of inventory,
4 tortious interference with existing and prospective business opportunities, breach of
5 contract, and breach of fiduciary duty. Attached hereto as **Exhibit A** is a true and
6 correct copy of the Complaint filed in this matter.

7 4. Defendants Wheeler and James have actively defended the Lawsuit and
8 asserted affirmative defenses and counterclaims against the Debtor and non-debtor
9 parties, including breach of contract, failure to pay wages, and wrongful termination.
10 Attached hereto as **Exhibit B** is a true and correct copy of the Defendants’ Answer and
11 Affirmative Defenses and Defendants Kamiakin Wheeler and Kanim James’ Amended
12 Counterclaim and Third Party Complaint. Attached hereto as **Exhibit C** is a true and
13 correct copy of the Plaintiff’s Answer to Defendants’ Amended Counterclaims.

14 5. The parties engaged in a significant amount of research (both legal and
15 factual) and discovery prior to the Debtor’s bankruptcy filing. The parties briefed
16 motions to dismiss and discovery motions, propounded and responded to
17 interrogatories and requests for production, produced over 60,000 pages of documents,
18 served and received production in response to multiple subpoenas, and have set a
19 schedule to try this case in October 2021 (approximately two years after filing).

20 6. The automatic stay should be lifted to allow the Debtor to defend against
21 the Defendants’ counterclaims and prosecute to judgment its Lawsuit for damages. The
22 Lawsuit involves exclusively questions of Washington law and venue is proper in the
23 Yakima County Superior Court.

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7. Further, much of the litigation has already taken place in the Superior Court. The Lawsuit was filed in November 2019, and there has already been extensive discovery and motions. The Superior Court action was initially set for trial in October 2021, after the parties underwent significant discussions to reach an agreed-upon schedule for discovery, summary judgment motions, and trial. In the interest of judicial economy this court should lift the stay and allow the Debtor to prosecute the Lawsuit.

8. The Debtor is confident in its claims against the Defendants and its ability to collect on a judgment or settlement. The benefit to the Debtor and the estate of proceeding with the Lawsuit greatly outweighs the risk involved in defending against the Defendants' counterclaims.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNED this 9th day of November, 2020, at Washington, DC.

/s/ Paul M. Levine
Paul M. Levine